

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:12-pt-1

v.

HON. JANET T. NEFF

JOSHUA W. HEIER,

Defendant.

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MEMORANDUM OPINION AND ORDER

Defendant Joshua W. Heier has filed a motion for modification or reduction of sentence (Dkt 20) pursuant to 18 U.S.C. §3582(c)(2) on the basis of Amendment 782 of the United States Sentencing Guidelines, made retroactive by the Sentencing Commission. The U.S. Probation Department has filed a Report of Eligibility (Dkt 23) and Defendant has filed a Response (Dkt 26).

Section 3582(c)(2) permits a court to reduce the term of imprisonment of a defendant who has been sentenced based on a sentencing range that has subsequently been lowered by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). Amendment 782 of the United States Sentencing Guidelines reduced by two levels the offense levels assigned to the quantities that trigger the statutory mandatory minimum penalties in U.S.S.G. §§ 2D1.1 and 2D1.11. These modifications were made retroactive effective November 1, 2014. U.S.S.G. § 1B1.10.

Having fully considered the Report of Eligibility (Dkt 23) and Defendant's Response (Dkt 26), the Court has determined that the defendant is ineligible for a reduction of sentence according to the policy statements of the U.S. Sentencing Commission. Under U.S.S.G. § 1B1.10, Comment, Note 7A, only original sentences may be reduced under this section; this section does not authorize

the reduction of a sentence imposed upon revocation of supervised release. Because Mr. Heier's sentence was imposed upon the revocation of his supervised release, he is not eligible for a sentence reduction at this time. Mr. Heier wishes to preserve the issue for future consideration should the law change. See *Cvijetinovic v. Eberlin*, 617 F.3d 833, 840 (6th Cir. 2010).

Therefore, IT IS HEREBY ORDERED that Defendant's motion for modification of sentence (Dkt 20) pursuant to 18 U.S.C. § 3582(c)(2) is DENIED.

DATED: February 29, 2016

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge